IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6913 OF 2005

Vasudeo Atmaram Kumbhar .. Petitioner

Vs.

Vithal Jairam Pawaskar & Ors. .. Respondents

Mr.A.S. Khandeparkar i/by M/s. Khandeparkar & Associate for petitioner.

Mr. S.M. Railkar for respondent nos.1 to 12.

**CORAM: B.H. MARLAPALLE, J.**

**Date : June 22, 2006.**

**P.C.:**

1. Heard Mr. Khandeparkar, the learned counsel for the petitioner-defendant no.1.

2. Rule.

3. Mr. Railkar waives service for the respondents-original plaintiffs.

4. Rule is made returnable forthwith.

5. The petitioner has been impleaded as defendant no.1 in RCS No.16 of 2005 and he filed his Written Statement through his Power of Attorney Shri Atmaram Khumbhar. The said Power of Attorney was claimed to have been cancelled by a public notice dated 22/2/2005 and he alleged that the Power of Attorney was in collusion with the plaintiffs and/or under the threats of the plaintiffs had sought to compromise the suit and made statements giving up the petitioner's right in the suit property i.e. agricultural land admeasuring 2 Hectares and 71 Ares from Gat No.121/2 of village Pawshi. The amendment application filed at Exh.25 for amending the Written Statement has been rejected by the learned Civil Judge, Junior Division, at Kudal on 9/9/2005 and hence this petition.

6. By the ad-interim order dated 25/10/2005 this court has stayed the proceeding in RCS No.16 of 2005. Mr.Khandeparkar the learned counsel for the petitioner has placed on record a copy of the certificate granted to the petitioner under Section 32M of the Bombay

Tenancy and Agricultural Lands Act, 1948 in respect of the entire suit property on 31/10/2001 and he, therefore, states that the plaintiffs cannot claim a partition of the land of which the petitioner became owner under the Bombay Tenancy Act. Mr.Railkar, on the other hand by referring to the 7x12 extract of the suit land submitted that the land was owned by three different persons, namely, Jairam Shankar Pawaskar, Bhaskar Vasudeo Shirsat and Shivram Krushna Pawaskar with 1/3rd share each, whereas the certificate issued in favour of the petitioner under Section 32M of the Bombay Tenancy Act shows that the entire land was owned by Bhaskar Vasudeo Shirsat. Mr.Railkar further points out that the certificate issued under Section 32M of the Bombay Tenancy Act has been challenged in an appeal before the SDO and the same has been stayed in Tenancy Appeal No.53 of 2005 on 13/12/2005. All these issues can be gone into by leading evidence before the trial court and there was no reason to deny amendment sought for by the defendant no.1, more so on the allegation that the Power of Attorney had colluded with the plaintiffs and made statements defeating the interest of the defendant no.1. Allowing to amend the

Written Statement is not an evidence per se. The plaintiffs will be entitled to file their rejoinder or amend the plaint, if so required and both the parties are having rights to lead evidence in support of their respective pleas. At the same time, the amendment application moved was not grossly delayed or filed at such a stage that the trial of the suit had already started. In the interest of justice the amendment was required to be allowed. Mr. Railkar relied upon the decision in the case of Heeralal vs. Kalyan Mal and ors. **(AIR 1998 SC 618)** in support of his contentions that the admissions made in the Written Statement cannot be allowed to be withdrawn by amending the Written Statement. The law laid down in Heeralal's case is not applicable to the instant case wherein petitioner went before the trial court with the amendment application on a specific plea that the Power of Attorney in the Written Statement had made statements which will defeat the interest of the petitioner and he had sought to compromise the suit when petitioner is declared as the owner of the suit property under the Bombay Tenancy Act.

7. Hence the petition succeeds and the same is hereby allowed. The impugned order passed by the learned Judge of the trial court is hereby quashed and set aside and the amendment application at Exh.25 stands allowed with liberty to the plaintiffs to take appropriate steps to counter the said amended Written Statement. Rule made absolute accordingly.

**(B.H. Marlapalle,J.)**